

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **November 12, 2014**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Two: (530) 406-6843

#### **TENTATIVE RULING**

**Case:** **Davis Group, LP v. Moss**  
**Case No. CV UD 14-1576**

**Hearing Date:** **November 12, 2014** **Department Two** **9:00 a.m.**

Defendants Thomas Moss and Mary Moss's request for judicial notice ("RJN") is **DENIED**. (Evid. Code, § 452.) Defendants fail to provide any foundation for the Court to take judicial notice of the subject documents, and fail to provide any foundation for defendants' statements accompanying Exhibit B to the RJN. (Evid. Code, § 452, subds. (a) & (h).)

Defendants' motion to quash is **DENIED**. (Code Civ. Proc., § 418.10.) Defendants' motion to quash is premised on their argument that the notice to pay rent or quit ("notice") overstates the amount of rent due from defendants. The premise for defendants' argument that the notice overstates the amount of rent due is defendants' assertion that the stated rent due exceeds the amount comparable to the increase in the Consumer Price Index for Yolo County or five percent, whichever is greater. Because the Court has denied defendants' request for judicial notice, there is no admissible evidence to support defendants' argument that the notice overstates the rent due.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

#### **TENTATIVE RULING**

**Case:** **DDD Partnership v. Leyva**  
**Case No. CV UD 14-1769**

**Hearing Date:** **November 12, 2014** **Department Two** **9:00 a.m.**

The parties are **DIRECTED TO APPEAR**. The Court will consider hearing evidence from all parties as to the sufficiency of service of the notice to pay rent or quit, or will set an evidentiary hearing thereon.

### TENTATIVE RULING

**Case:** **Jaime v. California Cars and Tires Express**  
**Case No. CV CV 13-0728**

**Hearing Date:** **November 12, 2014** **Department Two** **9:00 a.m.**

Defendants California Cars and Tires Express, Lili Lopez, and Felix Romero's unopposed motion to deem matters admitted is **GRANTED**. (Code Civ. Proc., § 2033.280, subd. (b).)

The request for monetary sanctions against plaintiff Samuel Jaime is **GRANTED**, in the amount of \$1,260.00. (Code Civ. Proc., § 2033.280, subd. (c).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

### TENTATIVE RULING

**Case:** **Martinez v. City of Davis**  
**Case No. CV PO 14-721**

**Hearing Date:** **November 12, 2014** **Department Two** **9:00 a.m.**

The Court deems the form complaint filed by plaintiff James Martinez on September 10, 2014 superseded by the first amended complaint the Court ordered filed on September 15, 2014. Accordingly, the Court does not consider defendant City of Davis's motion to strike to the extent it is directed to the "Judicial Council form First Amended Complaint."

The Court does not consider defendant City of Davis's motion to strike to the extent it seeks relief on behalf of the individual defendants. The moving papers do not demonstrate that the law firm of Lenahan, Lee, Slater & Pearse, LLP also represents the individual defendants.

Defendant City of Davis's demurrer to the first and second causes of action for constitutional violations is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) The constitutional provisions forming the basis for these claims do not provide for a right of action for personal injury damages. (*Gates v. Superior Court* (1995) 32 Cal.App.4<sup>th</sup> 481, 517, 519.)

Defendant City of Davis's demurrer to the third cause of action "for violation of Government Code section 815.2(a)" is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Government Code section 845 does not provide a basis for assigning immunity to each of defendant's alleged acts, and defendant cites no other legal authority providing for immunity from this claim.

Defendant City of Davis's demurrer to the fourth cause of action for negligent intentional infliction of emotional distress and fifth cause of action for intentional infliction of emotional distress is **SUSTAINED WITHOUT LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Both of these claims fail because they are both common law tort claims unsupported by a statute imposing liability on a public entity. (Gov. Code, § 815.)

Defendant City of Davis's motion to strike page 7, lines 22-26, page 8, lines 18-21, and page 13, lines 19-22 is **DENIED AS MOOT**. (Code Civ. Proc., § 436.) The Court has sustained defendant's demurrer without leave to amend as to the causes of action to which these excerpts relate.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.